

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1437**

State of Minnesota,
Respondent,

vs.

Jakwan Markuese Horton,
Appellant.

**Filed September 15, 2025
Reversed and remanded
Larkin, Judge**

Redwood County District Court
File No. 64-CR-19-595

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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Considered and decided by Bentley, Presiding Judge; Larkin, Judge; and Segal,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of third-degree criminal sexual conduct, in part arguing that the district court erred by denying his *Batson* challenge to the state's use of a peremptory strike of a prospective juror. Because the district court erred in denying that challenge, we reverse and remand for a new trial.

FACTS

In July 2019, respondent State of Minnesota charged appellant Jakwan Markuese Horton with one count of third-degree criminal sexual conduct and one count of fourth-degree criminal sexual conduct. The case proceeded to trial.

During jury selection, the state used a peremptory challenge to excuse prospective juror AH, who is Black. Horton, who is also Black, objected to the state's removal of AH, arguing that it violated *Batson v. Kentucky*, 476 U.S. 79 (1986). The district court denied Horton's challenge and permitted the state to remove AH from the jury.

The jury found Horton guilty of both offenses, and the district court sentenced him to serve 180 months in prison.

Horton appeals.

DECISION

Horton raises several issues in this appeal. Because the first issue is dispositive, we limit our review to Horton's contention that the district court erred by overruling his objection to the state's peremptory challenge to prospective juror AH.

“In *Batson v. Kentucky*, the United States Supreme Court held that the exclusion of prospective jurors through peremptory challenges is subject to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.” *State v. Harvey*, 932 N.W.2d 792, 810 (Minn. 2019) (citing *Batson*, 476 U.S. at 89). A peremptory challenge that is used against a prospective juror based on the juror’s race “denies equal protection both to the prospective juror, because it denies her the right to participate in jury service, and to the defendant, because it violates his right to be tried by a jury made up of members selected by nondiscriminatory criteria.” *Id.* at 810-11 (quotation omitted).

The *Batson* Court articulated a three-step process for determining whether a peremptory challenge was motivated by racial discrimination. *Id.* at 811; *see State v. Carridine*, 812 N.W.2d 130, 136 (Minn. 2012) (“To determine whether a peremptory strike was discriminatory, we apply the three-step test articulated by the United States Supreme Court in *Batson*”); *see also* Minn. R. Crim. P. 26.02, subd. 7(3) (incorporating the three-step *Batson* process). First, a defendant must establish a prima facie case of discrimination by showing “(1) that a member of a protected racial group has been peremptorily excluded from the jury and (2) that circumstances of the case raise an inference that the exclusion was based on race.” *State v. Blanche*, 696 N.W.2d 351, 364-65 (Minn. 2005). Second, if the objecting party establishes a prima facie case of racial discrimination, “the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation.” *Id.* at 364 (quotation omitted). Third, “[i]f a race-neutral explanation is tendered, the [district] court must then decide . . . whether the

opponent of the strike has proved purposeful discrimination.” *Id.* at 364-65 (quotation omitted).

The existence of racial discrimination in the use of a peremptory challenge is a factual determination. *State v. Diggins*, 836 N.W.2d 349, 355 (Minn. 2013). This court gives “great deference to the district court’s [*Batson*] ruling and will uphold the ruling unless it is clearly erroneous.” *Id.* (quotation omitted). This deference recognizes “that the record may not reflect all of the relevant circumstances that the court may consider.” *State v. Pendleton*, 725 N.W.2d 717, 724 (Minn. 2007).

The Record

In this case, the district court applied the three-step *Batson* analysis when ruling on Horton’s challenge to the state’s use of a peremptory strike to exclude AH from the jury. As to the first step, Horton argued that the exclusion of AH would “eliminate[] the last [B]lack juror on the panel,” noting that the only other Black prospective juror had been removed by the state for cause. The district court found that Horton had met his burden to establish a prima facie case of racial discrimination. The state does not challenge that determination on appeal. *See State v. Lufkins*, 963 N.W.2d 205, 210 (Minn. 2021) (stating that “the question as to step one is moot on appeal” if “the district court proceeded to steps two and three of the analysis”).

As to the second step, the state argued that it removed the other Black prospective juror for cause because he was not forthcoming about his criminal history and that it had not engaged in “a pattern of striking against minorities . . . [because] they’re minorities.” The state noted that it did not deviate from its normal pattern of questioning, that it “asked

[AH] all the same exact questions in the same manner that [it] asked all of the other jurors,” and that AH’s “answers just were not as good as the other jurors, regardless of . . . the color of their skin.” In addition, the state asserted that AH was “maybe a little aggressive” when answering some of the state’s questions, especially regarding law enforcement and the justice system. Finally, the state said that the “biggest reason” it decided to strike AH “might be the fact that [AH] thinks people lie about criminal sexual conduct just to see them in trouble.”

The district court found that the state had provided a race-neutral explanation for its peremptory removal of AH. Horton does not challenge that determination on appeal. *See id.* (noting that the second step requires neither a persuasive nor plausible explanation and that the explanation offered will be deemed race-neutral so long as a discriminatory intent is not inherent in the explanation).

The dispute in this appeal regards the third step of the district court’s *Batson* analysis. “*Batson*’s third step requires two showings of the party making the *Batson* [objection]: (1) a demonstration that the proffered race-neutral reason is not the real reason for the strike and (2) a demonstration that the real reason was the race of the prospective juror.” *State v. Bailey*, 732 N.W.2d 612, 618 (Minn. 2007). The objecting party must show “that the peremptory challenge was motivated by racial discrimination and that the striking party’s proffered explanation was merely a pretext for the discriminatory motive.” *Lufkins*, 963 N.W.2d at 210 (quotation omitted). Horton argues that he satisfied his burden.

As to the third step, the district court stated that it would consider whether the state’s race-neutral reasons for striking AH were “merely pretext” and that it would examine the

merits of the state's reasons. Horton argued that the state's reasons for striking AH were pretextual. In response, the state first mentioned AH's statement during jury selection that AH believes people lie about criminal sexual conduct just to get people in trouble. The state then focused on three of AH's answers during jury selection: (1) "I'm currently in school to be in law enforcement. What made me choose that was the George Floyd situation," (2) "I feel like if we had more people of color [in law enforcement], it'd be better," and (3) law enforcement sometimes can be too aggressive "[i]n certain situations." In addition, the state noted that AH had disclosed that "I've had like ten . . . tickets all from the same officer, and it's a small town . . . , so I felt like he's pinpointing me because [of] my color" and "I've gotten . . . taken out of my house and never explained to me why I was being arrested before, and then when I got to the police station, I was handled by a man, not a woman."

In asserting that its removal of AH was not pretextual, the state argued that AH had mentioned George Floyd, which was "a case of excessive use of force," and that AH disclosed an interest in law enforcement. The state continued:

But when citing George Floyd, [AH] clearly thinks law enforcement is excessive and aggressive, and so that for this case, of course, . . . the State is taking that into consideration, as *I have a [W]hite law enforcement officer who will be testifying*, and I have to make strikes that I believe are in the best interest of my case and my victim, r-regarding—

(Emphasis added.)

The district court interrupted the state mid-sentence and asked, "[D]oes the law enforcement officer's race have anything to do [with] it?" The state responded, "I think,

based on [AH's] answer, *it [(race)] does have something to do with it*, because [AH] thinks,—.” (Emphasis added.) The district court again interrupted the state mid-sentence, but the state continued with its answer:

and I don't disagree with [AH], [AH] thinks that, you know, more [B]lack people in law enforcement would be beneficial to law enforcement. I think that does play into it, and I . . . [am] not disagreeing with [AH], but in this case, this specific case, . . . [AH] may not be the best juror for this specific case, which is the reasoning.

The state concluded, AH's “answers were just not as good as the other answers for the State.”

In response, Horton emphasized the state's reference to its “White officer,” arguing that the state essentially had said that “a [B]lack juror cannot assess [a] [W]hite law enforcement officer based upon that [B]lack juror's response” to jury-selection questions, which “causes a concern that . . . this was [a] racially motivated strike.” Horton also argued that AH's answers during jury selection did not reveal an anti-law enforcement bias. Horton further argued that “the [s]tatement that a [B]lack juror cannot assess the [W]hite law enforcement officer in this case . . . speaks to a racial motivation for removing that [B]lack juror” and was “literally, a statement of why [the state struck AH:] that [a] [B]lack jur[or] could not assess the [W]hite law enforcement officer.”

Horton buttressed his argument, emphasizing that

[T]his isn't a law enforcement officer case. There's one . . . law enforcement officer here who did do an investigation, but there's . . . testimony from civilian witnesses, there's a forensic interviewer. It's not a use of force case. It's not a case of defending against the actions of a law enforcement officer. It's not abuse by [a] law enforcement

officer. The law enforcement officer testifying is going to testify, as law enforcement officers do, but this case itself does not involve issues of race involving law enforcement. *So, for those reasons, I just think that it's most telling this . . . response [that a] [B]lack juror cannot assess the [W]hite law enforcement officer says that the strike was racially motivated*

(Emphasis added.)

The state objected to Horton's characterization of its remarks, insisting that it had not argued that "a [B]lack juror cannot assess a [W]hite police officer." The state explained that its remark was made in the context of AH's reference to "George Floyd and use of force" and "being anti-law enforcement," and not because AH "has an inability to sit through and . . . accurately and adequately assess any of the witnesses, including a [W]hite police officer."

The district court attempted to clarify that the "race of the officer" did not play any part in the state's race-neutral explanation. The district court questioned the state, noting that the state had "brought the race of the officer up" in the context of its arguments regarding George Floyd and asked the state if race was one of the reasons for its peremptory challenge of AH. The state responded that the officer's race was not a "consideration in using the strike" and argued, "[the state] was not thinking, oh, [the state has] a [W]hite law enforcement officer. [AH is] not going to be able to assess the credibility, that's absolutely not how that happened."

The district court also questioned the state to clarify its position that AH was "anti-law enforcement" asking if that was the prosecutor's "mental impression." The district court noted, "I don't recall her ever saying anything like that." The prosecutor explained,

“That was my mental impression after speaking with her.” The state also noted AH’s negative interaction with law enforcement and said that the state did not want any jurors who had experienced negative interactions with law enforcement.

In Horton’s final argument on the subject, he referred to the implicit-bias instruction that the district court had given at the start of jury selection, which began:

We all have feelings, assumptions, perceptions, fears and stereotypes about others, some biases we’re aware of in others we might not be fully aware of, which is why they are called implicit or unconscious biases, no matter how unbiased we think we are, our brains are required to make unconscious decisions.

Horton argued that AH’s reference to George Floyd had nothing to do with the case, that it was simply AH’s explanation regarding why she had chosen to become a police officer, and that the explanation was a “far cry from then saying, [a] [B]lack juror cannot assess a [W]hite law enforcement officer.”

Finally, Horton argued that the record supported a conclusion that the state’s race-neutral reasons for striking AH were pretextual. Horton said he was not accusing the state of anything. Instead, he suggested that the state’s bias was implicit. However, Horton argued that one of the “telling things” is that “the words came out” and “these words come out[,] then somewhere . . . the mind of the prosecution . . . was affected, [B]lack juror, [W]hite law enforcement officer.” Horton pointed out that those words had concerned the district court, noting that the court “even said . . . well, what does race have to do with it.” Horton also pointed out that the court did not “get [a] good response” to that question.

After Horton concluded his argument, the district court once again addressed the state's reliance on the race of its law enforcement officer, saying, "I'm still struggling with . . . whether any part of your decision to strike [AH was] based on the race of the officer that will be testifying here today and [AH's] ability as an African American to evaluate that credibility?" The state responded: "No, and again, that never came out of my mouth. Like that's not, that's not the issue. It's the aggressiveness of law enforcement." The state added that "the biggest" reason it struck AH was because AH "thinks that people lie about criminal sexual conduct just to get people in trouble."

The district court ultimately found that Horton had not proved purposeful racial discrimination and denied his *Batson* challenge.

The District Court's Analysis

Normally, the district court must rely on circumstantial evidence when determining whether racial discrimination has occurred during jury selection. For example, "[o]ne way to show purposeful discrimination is to show that [the state's] proffered reason for striking a prospective minority juror applies equally to a similar non-minority who is permitted to serve." *Bailey*, 732 N.W.2d at 618. In addition, the state's failure to ask certain questions of a prospective juror may be evidence that the state's proffered race-neutral explanation is merely a pretext. *State v. Henderson*, 620 N.W.2d 688, 704 (Minn. 2001). The state's reliance on a reason that will result in the disproportionate exclusion of members of a certain race is also a relevant circumstance bearing on whether a facially valid reason "is a pretextual explanation offered to mask a discriminatory intent." *State v. McRae*, 494 N.W.2d 252, 254 (Minn. 1992). Other "indicia of pretext" include the striking party's

deviation from “its normal pattern of questioning” and the reliance on answers to questions that “would have elicited the same response from any fair-minded person.” *State v. Reiners*, 664 N.W.2d 826, 834 (Minn. 2003).

This case is an anomaly because the state provided direct evidence of discriminatory intent: the state’s justification of its purportedly race-neutral strike of prospective juror AH, who is Black, was that the state would rely on the testimony of a “[W]hite law enforcement officer” at trial. The state’s indication that it struck AH because its law-enforcement witness was “White” raises the very concern addressed in *Batson*: “The core guarantee of equal protection, ensuring citizens that their State will not discriminate on account of race, would be meaningless were we to approve the exclusion of jurors on the basis of such assumptions [that] arise solely from the jurors’ race.” *Batson*, 476 U.S. at 97-98.

At the third step of the *Batson* analysis, the district court’s role “is to do more than determine whether the prosecutor articulated some basis for the challenge.” *McRae*, 494 N.W.2d at 258. In determining whether an opponent of a peremptory challenge has established racial discrimination in jury selection, the district court “must consider all of the evidence” and determine whether the opponent has proved “pretext and the existence of racial discrimination.” *Reiners*, 664 N.W.2d at 833. At the third step, it is “important” for the district court “to state fully its factual findings, including any credibility determinations.” *Id.* at 832.

Here, the district court recognized that “[t]he question is not [the] reasonableness of the certain non-racial motive” but rather the “genuineness of the motive, which turns on an

assessment of credibility.” Yet, in explaining its decision to disallow AH’s service on the jury, the district court assessed only the three race-neutral reasons that the state provided in support of striking AH: AH’s demeanor, AH’s statements regarding law enforcement, and AH’s statement that people lie about sexual assault to get others in trouble. The district court did not mention or discuss the state’s explanation that its case would rely on the testimony of a “[W]hite law enforcement officer.”

The district court ultimately found that Horton had not proved racial discrimination, “based on the information before it, in the race neutral explanation.” The district court emphasized that it had “rel[ied] primarily on the answers that law enforcement is too aggressive, showing a potential bias towards law enforcement” and “the answer to the question” whether “people will lie about sexual assault to get people in trouble.” But the district court was required to consider “all of the evidence.” *Id.* at 833. Yet when explaining its ruling, the district court did not mention or discuss the state’s race-based explanation for striking AH. Nor did the district court make any findings regarding the state’s explicit statement that race factored into its decision or any findings regarding its implicit credibility determination that the state struck AH based only on race-neutral reasons. On this record, the district court did not fulfill its “important” role “to state fully its factual findings, including any credibility determinations.” *Id.* at 832.

The district court also appears to have misapplied the law. When explaining its ruling, the district court stated that the state’s race-neutral reasons for striking AH were sound and that, therefore, Horton had not proved racial discrimination. But at the third step of the *Batson* analysis, the district court’s role “is to do more than determine whether

the prosecutor articulated some basis for the challenge.” *McRae*, 494 N.W.2d at 258. In addition, the district court said, “Frankly, the determination whether [AH] stated [that] she can be fair and reasonable in this case is [the] relevant consideration.” But peremptory challenges are “used to excuse prospective jurors who can be fair but are otherwise unsatisfactory to the challenging party.” *Reiners*, 664 N.W.2d at 833. Thus, a determination that a prospective juror could be fair is “irrelevant to the *Batson* analysis.” *Id.*

The district court’s failure to mention either the state’s explanation that it sought to excuse AH because the state’s case would rely on the testimony of a “White law enforcement officer” or the state’s attempt to explain why the officer’s race was relevant is troubling. The district court promptly interrupted the state after it cited the officer’s race as a basis for its peremptory challenge of AH and again interrupted the state as it attempted to explain why race was relevant. The district court then questioned the state in an attempt to clarify that its peremptory challenge was not based on the officer’s race. In answering those questions, the state retreated from its unsolicited statement that the officer’s race factored into its decision to exclude AH from the jury.

The prominence of the state’s “White law enforcement officer” justification in the district court, the district court’s own questioning of that justification, and the state’s retreat from its position in response to questions from the court all underscore the district court’s failure to carry out the important task of explaining its ruling.¹ *Id.* at 832 (stating it is

¹ Similarly, we do not know what to make of the state’s failure to address the “White law enforcement officer” issue in this appeal, which was submitted without oral argument.

“important” for the district court “to state fully its factual findings, including any credibility determinations”). The district court’s failure to do so indicates that the district court did not consider all of the evidence. *See id.* at 833 (stating the district court “must consider all of the evidence”). Finally, the district court’s focus on the validity of the state’s race-neutral reasons for the peremptory challenge indicates that the district court did not “do more than determine whether the prosecutor articulated some basis for the challenge.” *McRae*, 494 N.W.2d at 258.

On this record, we are not satisfied that the district court actually determined whether the state engaged in discrimination. Instead, the record shows that the district court based its ruling on the state’s race-neutral grounds for striking AH and indicated that it was influenced by an irrelevant standard when doing so (i.e., removal for cause).² For these reasons, we conclude that the district court did not apply the correct legal standard at step three of its *Batson* analysis.

Although Horton’s brief identifies that issue as one of five reasons we “must reverse the district court’s *Batson* decision,” the state does not acknowledge or address that reason in its brief to this court.

² We note that AH was not challenged for cause and that AH’s answers during voir dire indicated that she could be fair and reasonable. *See* Minn. R. Crim. P. 26.02, subd. 5(1) (allowing a challenge for cause if “[t]he juror’s state of mind—in reference to the case or to either party—satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party”). For example, defense counsel asked AH if she would hold her negative experience with her local police against the state because a law enforcement officer would be testifying; AH answered, “No. Not at all.” And the state asked AH if she was more or less likely to believe law enforcement because of those incidents; AH answered, “Not at all.” The state asked, “can [you] look at the facts of this case and the officer that testifies, you can judge his credibility and . . . put away those past experiences[?]”; AH answered, “Yes.”

“Ordinarily, we defer to a district court’s findings on the third step.” *Lufkins*, 963 N.W.2d at 213. “But when a district court’s finding or analysis is based on the wrong legal standard, we examine the record without deferring to the district court’s analysis.” *Id.* Because we are not satisfied that the district court applied the correct legal standard, we examine the record without deferring to the district court’s analysis.³ *See id.* (affording no deference based on ambiguity in the district court’s ruling).

The prosecutor’s candid statement that it was appropriate to strike juror AH, who is Black, because AH had referenced George Floyd and the state planned to call a “[W]hite law enforcement officer” as a witness, as well as the state’s subsequent argument that “it [(i.e., race)] does have something to do with it,” cannot be ignored. That was direct evidence of a racially motivated peremptory strike. Given the state’s attempt to justify its

³ We note, however, that our decision would not change even if we applied the deferential standard. As to the “great deference” standard, the supreme court has since explained:

Presumably, the use of the adjective “great” in our previous decisions was a style choice, for emphasis, and was not meant to establish a higher degree of deference than that applied to any other fact-finding function of the district court. The appropriate mechanism by which deference is applied to any fact finding of the district court is the clearly erroneous test. Deference, as measured by the clearly erroneous test, does not extend to fact findings that have no evidentiary support or legal conclusions that were arrived at by applying the incorrect legal standard. Otherwise, both the right of a party to make a peremptory strike and the right of the adverse party to make a *Batson* objection would be subject to the whim of each district judge.

Reiners, 664 N.W.2d at 834 n.3. A finding of fact is clearly erroneous if we are left with a definite and firm conviction that a mistake was made. *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006). Here, we have that conviction.

racial motive before backtracking in response to the district court’s questions—the last of which was leading—we are not persuaded by the state’s ultimate assurance that no part of its decision to strike AH was based on the race of the officer or AH’s “ability as an African American to evaluate that [officer’s] credibility.” Based on the unique circumstances of this case and the direct evidence of a racially motivated reason for the state’s peremptory strike of AH, we conclude that Horton’s *Batson* challenge should have been granted.

“If a prosecutor had a prohibited discriminatory intent or motive for striking a juror, a defendant is automatically entitled to a new trial because harmless error impact analysis is inappropriate . . . if there was racial discrimination in the selection of th[e] jury.” *State v. Greenleaf*, 591 N.W.2d 488, 500-01 (Minn. 1999) (quotation omitted). We therefore reverse and remand for a new trial.⁴

Reversed and remanded.

⁴ Because we reverse and remand on this ground, we do not address Horton’s other assignments of error, except to note the state’s concessions that it was improper for the prosecutor to refer to Horton as a “wolf” in closing argument and that the district court’s warrant of commitment incorrectly indicates that Horton was convicted of both third- and fourth-degree criminal sexual conduct.